

Assembly Bill No. 3407

CHAPTER 940

An act to amend Section 7203.5 of, and to add Section 7282.3 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 1996. Filed
with Secretary of State September 26, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3407, Knowles. Sales and use taxes: transient occupancy taxes: food products.

(1) The Bradley-Burns Uniform Local Sales and Use Tax Law requires each city, county, or city and county to contract with the State Board of Equalization to perform all functions incident to the administration or operation of the sales and use tax ordinance of that city, county, or city and county. Existing law requires the board to terminate its contract with a city, county, or city and county if that city, county, or city and county imposes a similar sales or use tax in addition to that authorized by and conforming to state law.

This bill would require the board to terminate its contract for administration with a city, county, or city and county that imposes a tax on the privilege of occupying a room or rooms in a hotel, motel, bed and breakfast inn, or similar transient lodging establishment, if the tax is imposed when the establishment provides food products to guests and that portion of the price for the transient occupancy accommodation that is allocable to the food products is subject to sales or use tax and local tax upon occupancy, as specified, and the operator of the establishment provides a specified allocation of the value of the food products.

(2) Under existing law, the legislative body of any city or county may levy a tax on the privilege of occupying a room or rooms or other living space in a hotel, inn, tourist home or house, motel, or other lodging, unless the occupancy is for any period of more than 30 days.

This bill would prohibit any city, county, or city and county, including any charter city, from levying a tax under those provisions on any amount subject to tax under the Sales and Use Tax Law with respect to the sale of food products, as defined.

(3) This bill would state the Legislature's intent in enacting the bill.

(4) This bill would provide that the provisions of the bill described in paragraph (1) above, concerning the termination of a board contract for the administration of a sales and use tax ordinance, shall become operative only if the provisions described in paragraph (2) above are held inapplicable to charter cities.

The people of the State of California do enact as follows:

SECTION 1. Section 7203.5 of the Revenue and Taxation Code is amended to read:

7203.5. (a) The State Board of Equalization shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, or city and county, if that city, county, or city and county imposes a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203.

(b) For purposes of this section, and notwithstanding subdivision (f), a city, county, or city and county shall be deemed to have imposed a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 to the extent that the city, county, or city and county levies a tax on the privilege of occupying a room or rooms in a hotel, motel, bed and breakfast inn, or similar transient lodging establishment when all of the following conditions are met:

(1) The hotel, motel, bed and breakfast inn, or similar transient lodging establishment provides food products for human consumption and all or some of the food products are provided solely for consumption by its transient guests and the invitees of those guests.

(2) The uniform cost of the food products provided solely for consumption by the establishment's transient guests and the invitees of those guests is included in the price of the transient occupancy accommodation, however denominated, and whether or not separately stated.

(3) The portion of the price of the transient occupancy accommodation allocable to these food products is subject to tax under Part 1 (commencing with Section 6001), and is also subject to tax imposed by the city, county, or city and county on the privilege of occupying a room or rooms in the establishment.

(4) The operator of the establishment provides the city, county, or city and county with a reasonable allocation of the value of the food products subject to tax under Part 1 (commencing with Section 6001) that is separately identified either on the guest's receipt or on the operator's accounting records.

(c) The provisions of subdivision (a) shall apply to any tax described in subdivision (b), whether characterized as a "transient occupancy tax," "bed tax," or otherwise, regardless of whether it is levied pursuant to Section 7280, pursuant to charter or other similar authority of the city, county, or city and county, or otherwise pursuant to law.

(d) (1) For purposes of this section, "hotel," "motel," "bed and breakfast inn," or "similar transient lodging establishment" means an establishment containing guest room accommodations with respect

to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. The existence of other relationships as between some occupants and the owner or operator thereof shall be immaterial.

(2) For purposes of this section, “food products” means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

(e) In the case of a termination, the board shall give the city, county, or city and county written notice of termination, stating the reasons therefor and the effective date of the termination, which shall be not earlier than the first day of the first calendar quarter commencing at least 30 days after the mailing of the notice to the city, county, or city and county. If the cause for termination is not cured within the time specified in the notice, the board shall not administer the ordinance until the cause for termination is removed and a new contract for the administration of the ordinance executed. The contract shall be operative not earlier than the first day of the first calendar quarter commencing after its execution. During the period of time that the board is not administering the sales and use tax ordinance of a city, county, or city and county, no ordinance of that city, county, or city and county shall be considered to be an ordinance enacted in accordance with this part.

(f) Except as provided in subdivision (b), nothing in this section shall be construed as prohibiting the levy or collection by a city, county, or city and county of any other substantially different tax authorized by the California Constitution or by statute or by the charter of any chartered city.

SEC. 2. Section 7282.3 is added to the Revenue and Taxation Code, to read:

7282.3. (a) Notwithstanding any other provision of law, no city, county, or city and county may levy a tax under Section 7280 on any amount subject to tax under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)) with respect to the sale of food products.

(b) This section shall also apply to charter cities.

(c) For purposes of this section, “food products” means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

SEC. 3. The Legislature finds and declares that taxpayers should not be subjected to both a sales and use tax and a transient occupancy tax on the same portion of a transaction. The Legislature further finds and declares that the right not to have portions of transactions that are subject to the sales and use tax also be subject to the transient occupancy tax is an issue of statewide concern, affecting all taxpayers,

and is not a municipal affair. In enacting this act, it is the intent of the Legislature to establish clear and uniform standards for the imposition of transient occupancy taxes on food products.

SEC. 4. The amendments made to Section 7203.5 of the Revenue and Taxation Code by Section 1 of this act shall become operative only if the provisions of Section 7282.3 of the Revenue and Taxation Code, as added by Section 2 of this act, are held to be inapplicable to charter cities.

